

Attachment Z

June 2, 2006

10 Hill Pond Road
Rutland, VT 05701

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary
U.S. Consumer Product Safety Commission ("USCPSC")
Washington, D.C. 20207

Re: FOIA Request **S6010069**:
Dell/Sony Latitude Notebook Computer Batteries;
File **RP060029** (Press Release 06-056)

Dear General Counsel;

This is an appeal under the Freedom of Information Act ("FOIA") of the above referenced information partial denial.

On May 5, 2006 I received a response to my January 5, 2006 request. My request was supplemented by fax on May 25, 2006 with three additional pages. As a Consumer, I was burnt, diagnosed with lithium toxicity, and more, from a Dell/Sony Latitude lithium ion battery/laptop. Disclosure of the information is fair in the circumstances and reasonably related to effectuating the purposes of this Consumer Product Safety Act. I have a right to know the effects of the laptops/notebooks, batteries, and chemicals on other Consumers, humans.

Dell's Continuing Obligation regarding Latitude laptop computers and batteries was presented in a September 29, 2000 letter to Mr. John Hodges, Esq. "If, after filing the "Full Report," the firm receives or learns of information concerning other incidents or injuries, or information that affects the scope, prevalence or seriousness of the defect or hazard, it must report that information to this Division immediately." Upon information and belief, Dell has yet to provide information regarding my incident and injuries to the Commission from the shorted and leaked Dell Latitude CPxJ computer and Sony lithium ion battery I was required to use to perform my job. These injuries were diagnosed by my employer selected treating medical providers during February and March 2001. Upon information and belief, Dell and Sony have this information.

October 18, 2000 Commission Letter to Dell states in part (RP000291)
"Notification of the recall by letter, to those consumers identified as purchasers of the affected battery packs." Dell Latitude and Inspiron Notebook Computers, including but not limited to, Latitude CPxJ. "Alleged Hazard, Battery pack may short circuit and ignite presenting a fire or thermal burn hazard." I, and upon information and belief, my employer Geographic Data Technology Inc. ("GDT") were never notified, even though I possessed and GDT had purchased a Dell Latitude CPxJ.

Upon information and belief, Dell and Sony have my name and address. I was not sent a direct notice of this or any of the previous recalls as the Commission has required in this and previous plans with similar language, the dates and report/release numbers, include but are not limited to, February 29, 2000, October 13, 2000, release # 01-013, November 2, 2000 release # 01-022 RP010019, May 3, 2001 release #01-140, September 25, 2003 release #03-197 RP030123, July 1, 2004, October 8, 2004 and December 16, 2005.

From the October 25, 2005 (document 31) letter it appears that Dell ("the firm") "You also noted that **the firm is still conducting its investigation into the reported problem, ...**" a report of October 24, 2005 under 15 U.S.C. 2064(b) ... **"identified a potential problem with certain battery packs manufactured by Sony Corporation for use in Dell, Inc. Latitude and Inspiron notebook computers.** Specifically, you reported that Dell was aware of two (2) reports of these batteries overheating in the United States." attached.

I don't know if Dell and Sony have provided the USCPSC a copy of Sony's History of the Lithium-Ion Rechargeable Battery; Michael Dell's Book Direct from Dell; Sam Stimson's comments to Batteries Digest; or a Product Safety Data Sheet ("PSDS") for the Latitude Lithium Ion Battery under their Continuing Obligation. I have attached these with this letter and will be filing these documents for information and release with the file on my incident. Please note it clearly states "keep away from children", yet the laptops/batteries are marketed directly to children and K-12 schools. I do not believe "that the Commission has been adequately informed of such defect, failure to comply, or such risk" as required per 2064 (b).

Information I have been able to obtain from the USCPSC regarding laptop/notebook computer and lithium ion batteries illustrates substantial increases in reported incidents and injuries. A pattern of incidents and injuries. Of the **79 USCPSC recalls** of adapters/computers/ batteries, **tens of millions of lithium ion batteries** manufactured by Sony have been **recalled, thousands of consumers have complained** about Dell/Sony lithium ion batteries/laptops, and **injuries have been reported.**

Per the above referenced recall as reported in Battery Digest "(Jan 2006) Dell recalls batteries in notebook computers." "The incidents involved damage to a tabletop, a desktop and minor damage to personal effects." It is of note that I also had personal effects damage by a Dell Latitude Laptop Computer with Sony Lithium Ion battery so the information requested here is relevant to me.

Further, the above information is illustrative of that already available in the public domain. Therefore, the information requested here should not be considered proprietary, confidential, confidential commercial information, trade secret, and Dell/Sony and the USCPSC have waived their rights to claim these Exemptions as further described below.

Consumers have a right to know.

Dell per its "full report of November 10, 2005 and subsequent submissions"..."indicated that some lithium-ion batteries manufactured for Dell could contain contaminates that create an internal short-circuit." "An internal short-circuit could result in excessive heat, smoke, or flames in the battery pack and possibly beyond, creating a risk of thermal burn." Federal Law requires per 49 CFR Chapter 1 part 173 (4) "Cells and batteries must be packed in such a way so as to prevent short circuits and must be packed in strong packaging, except when installed in equipment;" copy attached. It is apparent from the pattern, number and frequency of recalls for "short-circuits" that the Dell's Latitude lithium ion batteries do not prevent "short circuits", chemical exposures and the residual harmful effects including reported injuries and toxicity.

Upon information and belief no public hearings have been held on laptops/notebooks and lithium ion batteries.

It is my understanding that the USCPSC will bear the burden of proving why the documents were withheld in response to this request.

Per the October 25, 2005 letter, Dell identified its lithium ion batteries as a "substantial product hazard" per 2064(b). Documents 31-34

Per 2064 (b) as submitted by Dell, as evidenced by the Dec 20, 2005 letter, document pages 37, ..., and 38) (B) "in lieu of proceeding against such product under section 2064 ("substantial product hazards") (c) or (d) of this title, the Commission has accepted in writing a **remedial settlement agreement** dealing with such product;"

As the attached May 5, 2006 letter paragraph three states in part "negotiate **settlement agreements**" and "reveal the settlement negotiations and discussions" and further the "... staff has accepted the plan as adequate" under 15 USC 2064(b)..

Per Section 2005 Public disclosure of information (b)(5) the Commission shall not disclose to the public information submitted pursuant to section 2064(b) of this title respecting a consumer product unless-

(B) in lieu of proceeding against such product under section 2064(c) or (d) of this title, the Commission has accepted in writing a remedial settlement agreement dealing with such product;

Further as claimed *Exemption 3, 5 U.S.C. 552(b)(3)* "proprietary and confidential information" Dell is not the manufacturer of the batteries, but a distributor. The batteries are manufactured overseas and imported. Dell's right to claim proprietary and confidential information were waived when they introduced these products to the stream of commerce, listed the health effects on the Product Safety Data Sheet, and wrote about design defects in Direct From Dell "...it became apparent to me that we didn't have the capability inside the company to get the products to market on time, much less designed correctly."page 50. "Clearly, this wasn't the right way to approach the design."

page 51

Exemption 4. 5 U.S.C. 552 (b)(4) Trade Secrets and confidential commercial information, The "substantial competitive harm" test requires the government to show more than just a likelihood that a business might suffer some embarrassment or commercial loss if its records are disclosed. Michael Dell has written and had published Direct From Dell a book reviewing Dell's problems with notebook computers starting at page 50 "Into the Eye of the Storm." Further, per Dell's Sam Stimson to Battery Digest, *A Revisit to Lithium-ion Safety by Shirley Georgi* "Not only has the power density of a cell risen since 1995, but the number of defective parts per million (dppm) - **cell faults in the field have also escalated.**"... "Sam mentioned that with 740 million cells produced last year, there could be a **probability of having 740 "happenings" that are "not very nice"**. copy attached.

It is not a trade secret that Dell uses lithium ion batteries in its laptops indeed other manufacturers use lithium ion batteries with similar results, including frequent recalls, incidents, and injuries.

Exemption 5. 5 U.S.C 552 (b)(5) Internal Agency Memoranda, "The exemption does not cover purely factual portions of pre-decisional documents. Also, final opinions and other "post decisional" documents explaining an agency position are not exempt. Specifically it appears a though the attached December 20, 2005 illustrates in part "the staff has accepted the plan as adequate."

Exemption 6. Personal Privacy. The public interest is in disclosure. An agency must balance, favor disclosure as the information was volunteered, and a substantial product harm was admitted.

"Only individuals, not businesses, associations or corporations, can have their privacy intruded upon."

Although, "The Commission believes that it has **taken reasonable steps to assure the accuracy of the information.**" I was provided only 14 of 187 pages. This is less than 8% of the information volunteered to the Commission by Dell, 92% of information was exempted.

Exemption 7. Law Enforcement Records

In this case it has and further (B) "would deprive a person of a right of fair trial and an impartial adjudication." and as illustrated by my diagnoses, injuries, damages and right to impartial adjudication. The Product Safety Data Sheet "keep away from children" and "cause loss of sight" combined with injuries reported to the USCPSC and media illustrate these lithium ion batteries (F)"could reasonably be expected to endanger the life of physical safety of any individual"

Dell volunteered this information and these documents to you, as the USCPSC, acknowledging a substantial product hazard. I, my family, friends, fellow Americans, the public Consumers have been effected by this and the other recalls regarding lithium ion batteries laptop computer batteries have a right to the above referenced information.

As the frequency of incidents and injuries is increasing there is an

(ii) "urgency to inform the public"

and a

(2) "compelling need" exists for the requested information, the publics right to know and my right to fair adjudication.

The USCPSC had one of its own Dell Latitude Laptops leak and burn a hole in it. These laptops are marketed to be used on peoples (including children's) laps, kitchen tables, public places and more.

As illustrated by the information you have, I am not alone. As a Consumer, I have the right to this information as Dell and Sony chose to place these known defective products into the stream of commerce and have a continuing obligation to Consumers.

Agencies are not obligated to withhold information when public health and safety require this information be released. As described above, such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act.

I appeal the decision to require me to pay search and/or review charges for this request. I am not seeking documents for commercial use.

I can be contacted at 802 770-8345 if necessary, to discuss any aspect of my appeal.

Thank you for consideration of this appeal.

Very Truly Yours,



Michel J. Messier

Attachments;

Sony History

Direct From Dell

Battery Digest, A Revisit to Lithium Ion Safety

Product Safety Data Sheet

49 CFR Chapter 1 Part 173 (4)